But if, in fact, the deceased, as rider of the trishaw, swerved to the right and thereby contributed to the accident that took place, though the appellant, as driver of the car, may well have been negligent in all the circumstances of the case in not taking proper steps to avoid the trishaw by giving it a wide berth, the accident which occurred, though the result partly of the appellant in not taking the necessary avoiding action to avert that accident, may well have been also partly the fault of the unfortunate trishaw rider in swerving to the right in front of the oncoming vehicle. In my view, therefore, it was necessary that there should be a specific finding of fact as to whether or not the trishaw rider did so swerve to the right, and if he did do so, to what extent, if at all, he contributed to the accident which occurred.

For the reasons given by my brother Tan Ah Tah, I agree with him that in the particular circumstances of this case the damages awarded to the dependants under section 12 of the Civil Law Ordinance should be $18,000 and that they should be re-apportioned in the manner set out in his judgment.

I also agree that the respondents should pay the costs of this appeal, but that the order of the learned trial Judge as to the costs in the Court below should stand.

The costs of the new trial will, of course, be in the discretion of the Judge who decides the issue.

Wee Chong Jin J. : — I have had the advantage of reading the judgments of my brothers Tan Ah Tah and Rigby and agree with the orders proposed.

Order accordingly.

Solicitors : *Braddell Bros.; Murphy, Dunbar & Chung.*

A. CLOUET & CO. (MALAYA) LTD. v. SOUTH ASIA GLACIER BAR

[O. C. J. (Ambrose J.) July 14, 1958]

[Singapore — Suit No. 1325 of 1956]

Principal and Agent — Improper arrangement enabling sub-tenant to carry on business of bar — Whether agent by operation of law — Estoppel.

The defendants were tenants of certain premises, where they carried on the business of a bar and restaurant. In 1955, they sub-let the premises to one Lall Singh for a period of three years together with furniture, fixtures and fittings at a rent of $1,000 per month. It was agreed that the sub-tenant should pay the tenants 10 per cent of the gross cash sales every month. But the tenants were to have no say in the running of the business apart from the right to inspect the books at the end of each month. The sub-tenant agreed to indemnify the partners against all loss they might sustain as licensees of the premises in respect of any breach of regulations. The sub-tenant carried on business under the business name of "South Asia Bar & Restaurant". The plaintiff company supplied liquors to South Asia Bar & Restaurant and sued the defendants for the price of those liquors.

Held: (1) Lall Singh was sole proprietor of South Asia Bar & Restaurant during the material period;

(2) Lall Singh was not the agent of the defendants. The improper arrangement by which he was put into possession of the premises and enabled to carry on the business of the bar did not, by itself or by operation of law, make him the agent of the defendants: Mac Fisheries Ltd. v. Harrison[1] followed;

(3) the defendants were not estopped from denying that Lall Singh was their agent: Betts v. Harrison[2] distinguished;

(4) the plaintiff company's claim failed.

Cases referred to :—

(1) *Mac Fisheries Ltd. v. Harrison* (1924), 93 L.J.K.B. 811.

(2) *Betts v. Harrison* (1924) unreported but referred to at page 814 of 93 L.J.K.B.

CIVIL SUIT.

T. H. A. Potts for the plaintiffs.

John Pillai for the defendants.

Cur. Adv. Vult.

Ambrose J. : — Between the 27th July and the 23rd December, 1955, A. Clouet & Co. (Malaya) Ltd., sold and delivered liquors to the value of $2,878.50 to the South Asia Bar & Restaurant at No 12, Bencoolen Street, Singapore. The sum of $666.00 was paid to account and the balance due was $2,212.50 on the 31st December, 1955. The company sued Lall Singh trading as South Asia Bar & Restaurant for this amount and judgment in default of appearance was entered against him on the 2nd August, 1956. On the 11th January, 1957, the judgment was set aside on the application of the company on the ground that Lall Singh was neither the proprietor nor a partner of the South Asia Bar & Restaurant.

Between the 10th September and 28th December, 1955, Wills Lee & Co. Ltd., a subsidiary company of A. Clouet & Co. (Malaya) Ltd., sold and delivered liquors to the value of $2,314.30 to the South Asia Bar & Restaurant. Nothing was paid to account and the whole sum of $2,314.30 remained due on the 31st December, 1955. Wills Lee & Co. Ltd. sued Lall Singh trading as South Asia Bar & Restaurant for the amount of $2,314.30 and judgment in default of appearance was entered against him on the 2nd August, 1956. On the 11th January, 1957, the judgment was set aside on the application of Wills Lee & Co. Ltd. for the same reason as the judgment mentioned above.

On the 11th October, 1956, Wills Lee & Co. Ltd. assigned the debt due to it from the South Asia Bar & Restaurant to A. Clouet & Co. (Malaya) Ltd., and gave notice of the assignment to the South Asia Bar & Restaurant by a registered letter dated the 11th October, 1956.

The present suit was commenced by A. Clouet & Co. (Malaya) Ltd. on the 8th November, 1956, against "South Asia Glacier Bar, a firm, also known as South Asia Bar & Restaurant", the claim being for the two above-mentioned sums of $2,212.50 and $2,314.30.

Four partners, namely, Foo See Eng, Foo Kok Long, Ho Meng Thong and Giaw Hee Mioh commenced the business of a bar and restaurant under the business name of "South Asia Bar" at No. 12, Bencoolen Street, Singapore, on the 1st January, 1952. The business name was changed to "South Asia Glacier Bar" as from the 10th March, 1953, on which date Ho Meng Thong ceased to be a partner and Tan Siew Mee became a partner. The particulars relating to the firm of "South Asia Bar" and the above-mentioned changes were duly registered under the Business Names Ordinance, 1940. The name of "South Asia Bar & Restaurant" was not registered under that Ordinance.

There is no doubt that the plaintiff company and its subsidiary company sold and delivered the liquors in question between the 27th July and the 28th December, 1955, to the "South Asia Bar & Restaurant" at No. 12, Bencoolen Street, Singapore. The question which counsel for the plaintiffs company asked the Court to decide was this: who was the proprietor or who were the partners of the "South Asia Bar & Restaurant" during that period? Lee Kok Lian, who was during the material period and still is manager of the Liquors Sales Department of A. Clouet & Co. (Malaya) Ltd. and also of Wills Lee & Co. Ltd., went in May, 1955, to No. 12, Bencoolen Street, to canvass orders for liquors. He saw the name "South Asia Bar & Restaurant" outside the premises. He saw that there was only one business being carried on on the ground floor. (The first floor was occupied by another business called "South Asia Hotel"). He saw a bar counter and tables and chairs on the ground floor. He went up to a person behind the bar counter. From him he learned that Lall Singh was in charge. He spoke to Lall Singh and Lall Singh placed an order with him for whisky. Subsequently he received further orders for liquors, averaging one a month, from Lall Singh on the premises. On other occasions, orders were placed direct by someone on behalf of the South Asia Bar & Restaurant with the Liquors Sales Departments of the plaintiff company and its subsidiary company.

Each of the delivery orders accompanying the liquors was signed by the person to whom the liquors were delivered at South Asia Bar & Restaurant. Some were signed by Lall Singh with the words "South Asia Bar & Restaurant" impressed above his signature and the word "Proprietor" below. Others were signed by Lall Singh without any additional words. Some were signed by an unidentified person with the words "South Asia Bar & Restaurant" impressed above his signature and the word "Proprietor" below. Others were signed by an unidentified person and impressed in the same manner but with the word "Proprietor" crossed out. Others were signed by an unidentified person without any additional words.

On or about the 3rd November 1955, Lee Kok Lian saw a cheque for $666.00 dated 5th November, 1955, signed by Lall Singh with the words "South Asia Bar & Restaurant" impressed above his signature and the word "Proprietor" below. He assumed from those words that Lall Singh was the sole proprietor of the "South Asia Bar & Restaurant". The two actions referred to above were accordingly brought against Lall Singh trading as "South Asia Bar & Restaurant".

It was only after searches had been made in the Registry of Business Names shortly before the 8th November, 1956, that the plaintiff company ascertained the registered particulars relating to the "South Asia Bar" and the change of name to "South Asia Glacier Bar". The present suit was accordingly instituted against "South Asia Glacier Bar, a firm, also known as South Asia Bar & Restaurant" on the 8th November, 1956.

By an agreement made on the 19th August, 1955, between the partners of South Asia Glacier Bar and Lall Singh, the South Asia Glacier Bar who were the tenants of the ground floor of No. 12, Bencoolen Street, agreed to sub-let the ground floor, including furniture, fixtures and fittings, to Lall Singh at a rent of $1,000 per month and to allow him to carry on the business of bar and restaurant for a period of three years from the 10th March. 1955. It was further agreed that Lall Singh should pay the tenants 10% of the gross cash sales every month from the bar and restaurant excluding cigarettes and tobacco. But the tenants were to have no say in the running of the bar and restaurant apart from the right to inspect the books at the end of every month.

Lee Kok Lian (the manager of the Liquor Sales Department of the plaintiff company) had seen Foo See Eng, one of the partners of the defendant firm, working at the account-books in a corner beside the bar counter in the bar. This fact by itself did not prove that the partners of the South Asia Glacier Bar were running the bar during the material period. Under the agreement Lall Singh was at liberty to employ the staff formerly employed by the South Asia Glacier Bar. Foo See Eng might have been employed

by Lall Singh as a member of such staff. Shortly after the writ was issued on the 8th November, 1956, Foo See Eng offered to pay ten per cent of the amounts due to the plaintiff company and its subsidiary. The offer was made to Lee Kok Lian but turned down by the Department Manager of the plaintiff company. This fact by itself did not mean that the partners of the South Asia Glacier Bar were running the bar during the material period or accepted liability for the debts incurred by Lall Singh.

There was no evidence that South Asia Glacier Bar was doing business on the premises during the material time. Lee Kok Lian testified that only one business was being carried on on the ground floor of No. 12, Bencoolen Street. There was no evidence that the name "South Asia Bar" or the name "South Asia Glacier Bar" appeared on the outside or the inside of the premises.

The defendants did not call any witnesses.

The first contention of counsel for the plaintiff company was that the defendants were the partners of the "South Asia Bar & Restaurant". On the evidence adduced by the plaintiff company, I am satisfied and find as a fact that Lall Singh was the sole proprietor of the South Asia Bar & Restaurant during the material period.

The second contention of counsel for the plaintiff company was that Lall Singh was the agent of the defendant firm. I am satisfied on the evidence before me and find as a fact that Lall Singh was not the agent of the defendant firm. It is true that under Clause 5 of the agreement, Lall Singh agreed with the partners of the South Asia Glacier Bar that he would indemnify them against all loss they might sustain as licensees of the premises in respect of any breach of regulations. In my view the improper arrangement by which Lall Singh was put into possession of the premises and enabled to carry on the business of the bar did not, by itself or by operation of law, make him the agent of the defendant firm. This view is based on the decision in *Mac Fisheries Ltd. v. Harrison*[1]. In that case it was held by Swift J. that where two people agreed that one should illegally and improperly occupy a position which could only be lawfully occupied by the other, that did not necessarily make the person occupying the position the agent for all purposes of the person who ought to be occupying it.

The third contention of counsel for the plaintiff company was, in effect, that, even if the defendants did not constitute Lall Singh their agent in fact, they were estopped by their conduct from denying that Lall Singh was their agent. He relied on the unreported case of *Betts v. Harrison*[2] which is referred to in the case of *Mac Fisheries Ltd. v. Harrison*[1] (at page 814 of the report cited above). In that unreported case it was proved that the defendant, Harrison, held a licence authorizing him to sell intoxicating liquors at a public-house and that he put Mrs. Squires into possession of the public-house. The Divisional Court took the view that the result of the improper arrangement was to represent to the world and to the plaintiff's representative either that Mrs. Squires was the licensee or that she was the agent of the licensee. Upon proof that the plaintiff's representative had seen the name of Harrison as licensee over the door and that he believed Mrs. Squires was Harrison's agent, the Divisional Court held that Harrison was estopped from denying that such was the position. In the present case, however, it has to be borne in mind that no estoppel whatever was raised in the plaintiff company's pleadings.

If the plaintiff company had raised the appropriate estoppel in its pleadings, what would the position have been? All that counsel for the plaintiff company could have said was that the effect of the improper arrangement between the defendant firm and Lall Singh was to represent to the world and the plaintiff company's representative that Lall Singh was the licensee or that he was the agent of the licensee. There was no evidence, however, that the name of the licensee was over the door. In fact there was no evidence as to who was the licensee. Under the circumstances, it would have been impossible to say that the present case was on all fours with *Betts v. Harrison*[2] as far as estoppel is concerned. Counsel for the plaintiff company sought to get round the difficulty by saying that the plaintiff company's representative knew that Lall Singh was not the licensee and therefore believed that Lall Singh was the agent of the firm carrying on business as South Asia Bar & Restaurant at the time the contracts were entered into. I did not accept the word of Lee Kok Lian (the plaintiff company's representative) that he knew Lall Singh was not the licensee. He did not say how he came to such a conclusion. He may have said this merely to support the argument of counsel for the plaintiff company. His belief that Lall Singh was the agent of the firm carrying on business as South Asia Bar & Restaurant was not the same as belief that Lall Singh was the agent of the defendant

firm, because the defendant firm was not carrying on business as South Asia Bar & Restaurant during the material period. There was no evidence in the present case that the plaintiff company's representative believed that Lall Singh was the agent of the defendant firm. There was no evidence, if he did entertain such a belief, that the defendant firm induced him to do so. The defendant firm, as between themselves and the plaintiff company, would accordingly not have been estopped from denying that Lall Singh was their agent.

For the above reasons I hold that the plaintiff company's claim fails and give judgment for the defendants with costs.

Claim dismissed.

Solicitors: *Sisson & Delay; Pillai & Co.*

MANIAM v. R. RAJOO

[A. Cr. J. (Smith J.) November 6, 1957]

[K. L. — Criminal Appeal No. 21 of 1957]

Penal Code, s. 498 — Enticing away a married woman — Hindu marriage — Proof.

For a charge of enticing away a married woman under section 498 of the Penal Code to succeed, marriage must be strictly proved. When any Hindu marriage is to be proved for the purposes of this section, it must be proved that the ceremonies were appropriate to the locality, family and caste of the parties concerned.

Cases referred to:—

(1) *Ramasamy v. Public Prosecutor* (1938) M.L.J. 137.

(2) *R. v. Ratnam* (1930) S.S.L.R. 218.

MAGISTRATE'S CRIMINAL APPEAL.

P. P. Nair for the appellant.

T. C. Tang for the respondent.

Smith J. : — The appellant was charged with and convicted upon the following charge :—

"That you on 10.10.53 at 3¾ mile, Ampang Road, Kuala Lumpur, enticed away one Janagi whom you knew or had reason to believe to be the wife of one R. Rajoo with intent that she might have illicit intercourse with some person and that you have thereby committed an offence under section 498 Penal Code."

The appeal must succeed on two grounds — first that there is not sufficient evidence that the woman Janagi was properly married to the man Rajoo, and secondly that there is upon the record no evidence that the appellant enticed the woman away from her reputed husband.

The marriage was proved by the statement of the husband that he had been properly married according to Hindu rites. He gave evidence that the marriage took place in a Hindu temple in Bungsar Road in the presence of a number of persons, including the bridegroom's father, that there was a priest present and the thali was tied. The bridegroom's father gave evidence in support and stated that he was satisfied that it was carried out according to Hindu rites. That was all the evidence which was given with regard to the marriage. The law relating to the proof of a Hindu marriage for the purposes of section 498 of the Penal Code has been fully discussed in the case of *Ramasamy v. Public Prosecutor*[1]. In that case Cussen J. cited with approval the following passage from the judgment in *R. v. Ratnam*[2]:—

"As to the ceremony eye-witnesses testified that all 'the usual Hindu Marriage rites were carried through by the priest of the Temple' but this Court has no judicial knowledge of what constitutes a valid Hindu marriage."

Again later in the same judgment Cussen J. cited with approval the following passage from *Trevelyan's* Hindu Law (3rd edition) at pages 45 and 64 on the subject of Hindu Marriage. At page 64 the author states :—

"Ceremonies vary according to local or family or caste usage."

In this case no evidence was given as to what was the caste of the parties to the marriage or what was the family or local usage, nor was any expert evidence of any kind called even though a priest was said to be present at the ceremony. In *Ramasamy's* case quoted above Cussen J. held that the evidence of the Pandaram who performed the marriage was sufficient for the purpose of proving that correct ceremonial had been used. There was, however, in this case no evidence to show that either the plaintiff Rajoo or his father were experts in Hindu law. I was not prepared to accept the respondent's argument that the customary law relating to Hindu marriage is so well known that there is no necessity that it should be proved by expert evidence. No authority was cited to me for this proposition and I consider, on the authority of *Trevelyan,* that when any Hindu marriage is to be proved before a Court for the purposes of section 498 of the Penal Code it must be proved that the ceremonies are appropriate to the locality, family and caste.

Turning to my second ground for allowing the appeal the plaintiff's evidence showed that in July 1953 he wished his alleged wife to leave her parents' home and make a separate home with him but she refused. At the end of July 1953 the complainant left his alleged wife who continued to live with her father. Six months after he had left her he heard that his alleged wife was misbehaving herself. Turning to the evidence of the alleged wife who was a witness for the complainant it appears that after the complainant had left her she came to know the appellant and went to live with him as his mistress. There is in